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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,089	12/15/2000	Constantinos Balas	FRN-002	3243

959 7590 08/23/2002

LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

EXAMINER

NERBUN, PETER P

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 08/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,089

Applicant(s)

BALAS, CONSTANTINOS

Examiner

Peter P Nerbun

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

The disclosure is objected to for containing minor errors in syntax and spelling. Note, for example, page 1, line 17 ("decease" should be changed to --disease--) and page 15, line 33 and page 16, line 18 ("devises" should be changed to --devices--). The specification should be reviewed to correct these and other such errors.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2, 6, 7, 9, 10, 12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Klaveness et al. The patent to Klaveness et al discloses a method for monitoring the effects of a pathology differentiating agent on a tissue sample comprising applying a pathology differentiating agent on a tissue sample (see col. 29, lines 5-6) and monitoring the rate of change of light reflection from said tissue sample over time (see col. 29, lines 5-7 and col. 29, lines 10-11), thereby monitoring the effects of a pathology differentiating agent on a tissue sample.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klaveness et al in view of Deckert et al. To select a cervical tissue sample as the tissue sample as suggested by Deckert et al (see col. 8, lines 19-22) would have been obvious since Klaveness states that the tissue may be monitored *in vivo*.

Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klaveness et al in view of Modell et al. To select an esophagus tissue sample as the tissue sample as suggested by Modell et al (see col. 26, lines 30-38) would have been obvious since Klaveness states that the tissue may be monitored through use of an endoscope.

Claims 5, 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klaveness et al in view of Kaplan. To select an ear tissue sample as the tissue sample as suggested by Kaplan (see col. 8, lines 7-10) would have been obvious since Klaveness states that the image may be acquired from light transmitted through a part of the body (e.g. an ear lobe).

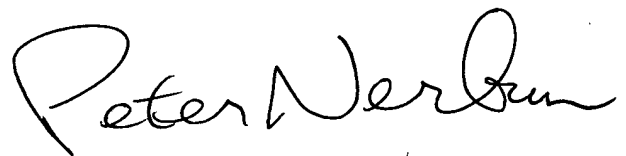
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Peter Nerbun
August 21, 2002

A handwritten signature in black ink that reads "Peter Nerbun". The signature is written in a cursive style with a large, looping initial "P".

Peter Nerbun
Primary Examiner